

BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 95-1192-E - ORDER NO. 96-666  
SEPTEMBER 26, 1996

IN RE: Proceeding for Approval of PURPA ) ORDER DENYING  
Avoided Cost Rates for Electric ) PETITIONS FOR  
Companies. ) REHEARING AND/OR  
 ) RECONSIDERATION  
 )

This matter comes before the Public Service Commission of South Carolina (the Commission) on two Petitions for Rehearing and Reconsideration filed by Consolidated Hydro Southeast, Inc. (Consolidated Hydro) and Bluestone Energy Design, Inc. (Bluestone), respectively. For the reasons delineated below, these Petitions must be denied.

Consolidated Hydro first states that the Commission should direct utilities to negotiate in good faith with qualifying facilities (QFs) for long-term contracts. The Commission has reviewed its past Orders in this matter, and finds that we have already discussed this in our Order No. 85-347 at 20. Further, it is a general principle that in all contract negotiations, such negotiations should be done in good faith.

Further, we reiterate our earlier finding that the financial status of the QFs is not the standard for examination in this case, but under the Public Utility Regulatory Policy Act of 1978 (PURPA), the standard is the utility's avoided cost. Costs as

related to the operational expenses of Consolidated Hydro are just not relevant in this case. The Commission, in Order No. 96-570, expressed sympathy with the plight of the QF's, but held that their operational and maintenance expenses were simply irrelevant in an avoided cost proceeding.

Second, Consolidated Hydro states that the Commission should review Duke Power Company's (Duke's) capacity credit rate. An examination of the Petition for Rehearing and Reconsideration filed by Consolidated Hydro reveals that Consolidated Hydro believes that Duke's capacity credit should be doubled in order to reflect a change in one assumption used in calculating the annual cost of combustion turbines (CTs). Consolidated Hydro provided no credible evidence to support this request. Duke's estimate of 1997 CT costs, which have not been contested by Consolidated Hydro, is more reasonable and appropriate. Second, Duke's capacity credit is only slightly higher than Carolina Power & Light's (CP&L's) capacity credit. This would further seem to indicate that Duke's estimate is reasonable, and similar to the CT cost and rates filed by the other electric utilities. Also, Duke uses reasonable estimates for the future cost of a CT in its model, and appropriately incorporates these estimates and the calculations that determine capacity credits, according to the testimony of Duke witness Steve Young, which we find credible.

Contrary to the statement of Consolidated Hydro witness Slater, Duke witness Young did not agree that CT costs will continue to decline in perpetuity. Young specifically challenged

Slater's assumption that CT costs would decline by 5% every year for at least 30 years. Although costs have certainly declined during recent years, this does not necessarily hold true for the future.

It should be noted that Consolidated Hydro did not explicitly provide an alternative energy rate, but only provided the example calculations, using the assumption that the CT costs would decline by 5% every year from now on. This was not what was related in the evidence.

Further, it would appear to this Commission that Duke uses a logical sequence of assumptions and calculations in its derivation of capacity credits. First, the estimate of 1997 CT costs uses Duke's best evidence of these costs, and is slightly higher than other utilities' estimates, reflecting lower market prices. Second, the projection of future CT costs also uses Duke's best evidence, and incorporates the best available information on CT cost trends. The projections are also consistent with other utilities' approaches and with generally accepted economic practice. Third, Duke's use of a positive inflation rate in its calculations is correct for the determination of capacity credits. Finally, in our opinion, Duke's approved capacity rates ensure that customers do not pay more for power than it is worth. Duke's approved capacity credits are the appropriate rates for QF purposes.

Thirdly, Consolidated Hydro states that the Commission should afford it an adequate amount of time to prepare its case.

Clearly, throughout the duration of this proceeding, Consolidated Hydro has repeatedly complained that, first, it wanted a continuance of the hearing, and second, that it needed more time to prepare its case. As shown by the testimony of Consolidated Hydro witness Slater, he was able to "duplicate Duke's PROMOD database" several weeks before the hearing. See testimony of Slater at 5. Therefore, Consolidated Hydro's statement is unavailing.

Upon a review of the Commission procedure in this case, we find that we followed our standard procedures in scheduling the pre-filing deadlines and the hearing. Duke was able to timely resolve discovery issues with other parties in this case. In our opinion, no party was disadvantaged more than any other by the schedule. A review of the procedural history of the proceeding is also helpful in further analysis of Consolidated Hydro's allegations.

First, on September 18, 1995, Duke filed its Schedule PP (SC) and Standard Purchased Power Agreement with the Commission for approval. In January 1996, the Commission ordered that the utilities publish legal notice and establish pre-filing deadlines. Duke served notice of Duke's filing on Consolidated Hydro on February 7, 1996. Over two months lapsed before Consolidated Hydro served its first set of interrogatories on Duke on April 16, 1996. In its interrogatories, Consolidated Hydro demanded that Duke respond within ten (10) days. Duke requested, and the Commission granted a five (5) day extension. To the extent

Consolidated Hydro believes that it had inadequate time to prepare, it should be noted that Consolidated Hydro took two months after the filing of the Application before it served any data requests on Duke.

Second, in March 1996, the hearing was scheduled for May 15, 1996. On April 5, 1996, the Commission rescheduled the hearing for August 8, 1996. The Commission established testimony and rebuttal testimony pre-filing deadlines in a customary fashion and schedule. On April 8, 1996, Consolidated Hydro again requested a change in the schedule to modify the pre-filing dates.

Next, it should be noted that Duke objected to certain data requests as unreasonable where Consolidated Hydro requested what Duke termed as highly sensitive competitive information. Consolidated Hydro filed a Motion to Compel Duke to respond. Duke responded, and the Commission set the matter for oral argument within three weeks of Duke's response. On June 11, 1996, the Commission ordered Duke to provide a portion of the requested data under specific terms and conditions. These terms and conditions were not substantially different from those that Duke had originally offered to Consolidated Hydro.

On June 17, 1996, Duke faxed a letter to Consolidated Hydro's counsel forwarding Duke's Confidentiality Agreement, since Consolidated Hydro had not contacted Duke since the Commission had ruled on the discovery dispute. On June 28, 1996, Consolidated Hydro again requested a continuance of the hearing and reconsideration of the Commission's Order on the discovery

dispute. On July 8, 1996, Consolidated Hydro withdrew its Request for Reconsideration and Continuance, but asked for additional time in which to file testimony.

Next, Consolidated Hydro argued at great length at the avoided cost hearing that it did not have sufficient time to prepare its case, and that argument was in the record when the Commission rendered its decision on the rates. For the reasons as stated above, we do not think that Consolidated Hydro's allegation that it did not have adequate time to prepare its case has any merit. Consolidated Hydro simply did not diligently pursue its discovery opportunities, especially at the beginning of the case. Consolidated Hydro's delay simply caused it to run out of time at the end of the process.

It should also be noted that Consolidated Hydro does not sell any energy or capacity to Duke under the standard form of purchased power agreements or standard rates which were at issue in this proceeding. See Hearing Exhibit 8, KBK-1, Section III at 1. (Consolidated Hydro was formerly known as Aquenergy Systems. See Testimony of Fulmer at 1.) Consolidated Hydro is therefore not directly impacted or damaged by the approved rates. We deny the Petition of Consolidated Hydro in toto.

With regard to the Petition filed by Bluestone Energy Design, Inc., we note that said Petition makes several points. First, Bluestone states that the Commission misapprehends the testimony of Kenneth Slater. Our analysis of this matter in Order No. 96-570 is complete. The Commission simply chose to adopt the

reasoning in the testimony of Duke's witnesses, rather than that in the testimony of Kenneth Slater. The Commission sits as a trier of facts, akin to a jury of experts. Hamm v. South Carolina Public Service Commission and South Carolina Electric & Gas Company, 309 S.C. 282, 422 S.E.2d 110 (1992). Therefore, the statement that the Commission does not understand the testimony of witness Slater is unavailing.

Second, Bluestone states that the standard must be examined in this case as to whether or not Duke is capable of operating any of its facilities at the avoided costs that it has put forth. This is not the standard that must be examined in this case. The standard that must be examined is that of an avoided cost, that is, what cost may a utility avoid by purchasing its power from a qualifying facility? The cost of operation of the QF is simply not an issue, therefore, the second ground of Bluestone's Petition is unavailing.

Third, Bluestone states that the Commission's Order has accepted Duke's data without review and without allowing the QFs the review that they have requested. Such is simply not the case. As stated, Commission Order No. 96-570 thoroughly analyzed Duke's data, found it credible, and accepted it, and further, reasonable discovery times were allowed as discussed above in the Consolidated Hydro section. For this reason, Bluestone's third point is without merit.

It should also be pointed out that Bluestone does not sell any energy or capacity to Duke under the standard form of

purchased power agreements or standard rates which were at issue in this proceeding. See Hearing Exhibit 8, KBK-1, Section III at 2. Bluestone is therefore not directly impacted or damaged by the approved rates.

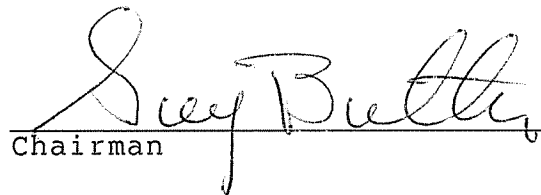
We must also note the lack of any active participation in the case by Bluestone. Bluestone failed to provide expert testimony, or to even cross-examine any of the other expert witnesses in the case. Except for one letter, which was not placed into the evidence of this case, Bluestone failed to pursue any course of action in this case. These factors make Bluestone's objections to the Commission's Order at this point even more unavailing. We also therefore deny Bluestone's Petition as a whole.

CONCLUSION

The Commission has examined both Petitions for Rehearing and Reconsideration in this matter, and we find that they must be denied, because of the reasoning as stated above.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)